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Feds' rampant use of no-bid contracts the essence of corruption

BY DAVID WILLIAMS, OPINION CONTRIBUTOR - 08/01/17 06:40 PM EDT



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Secretary of Veterans Affairs (VA) David Shulkin just awarded a contract worth billions of dollars to Cerner, a health technology company. Secretary Shulkin, who was seeking a firm to build the VA's new electronic health records system, awarded the contract without even considering proposals from other companies.

Such "no-bid" contracts are an outrage. Companies seeking the government's business should compete on price and quality — just like firms that operate exclusively in the private sector.

Foregoing healthy market competition and pre-selecting winners wastes money and encourages fraud and abuse.

Federal law requires "full and open competition" for most government procurements. Here's how the bidding process traditionally works. The government publicly announces its need for a specific product or service — such as a year's worth of public-school lunches or a new naval vessel. Companies submit sealed proposals, and the government chooses the lowest-cost, highest-quality bidder. Naturally, there are exceptions to the open-bidding process. If there is only one company (a "sole source") capable of providing a particular product or service, an agency can contract with that firm directly. Agencies can also forego open bidding if they deem it "necessary in the public interest."

But at many agencies, no-bid contracts have become the rule, not the exception. The share of Pentagon contract spending awarded competitively has fallen almost every year since 2008. In fiscal year 2016, more than half of Defense Department procurement spending — totaling more than \$100 billion — was on noncompetitive contracts.

Shulkin invoked a public-interest exception to award Cerner the health records contract without soliciting quotes from other companies. Shulkin explains he was convinced the VA "can do this cheaper for the taxpayers by essentially moving forward quickly without a lengthy [bidding] process." Unfortunately, this logic does not stand up to the reality of the process. The VA's own undersecretary recently testified that this could be a "five- to 10-year project at this point."

Yet, by his own admission, he has no idea what the project will cost. Cerner already has a similar contract with the Department of Defense. That project, which is several years behind schedule and well over budget, was originally budgeted for \$4.3 billion, and Shulkin himself acknowledges that the "VA is a bigger organization."

So this project could easily run into the tens of billions of dollars — and that's assuming all goes according to plan, which is quite a big assumption. Now, Cerner has all the leverage when it negotiates the final contract price with the VA. The public interest is hardly served when the VA doesn't comparison-shop for a system that will hold millions of veterans' sensitive medical information.

Just like the Cerner contract, many of these no-bid deals are indefensible. The Pentagon awarded more than \$50 million in noncompetitive contracts to Applied Energetics for a weapons system that defuses roadside bombs. The Pentagon claimed Applied Energetics was the "sole source" for the technology.

That wasn't true. Another company, Xtreme Alternative Defense Systems, had developed a similar, less expensive product. But it wasn't given a chance to compete for the project and potentially save taxpayers millions.

The Department of Defense isn't the only offender. In 2008, a federal investigation revealed that FEMA misspent nearly \$46 million on four no-bid contracts in the wake of Hurricane Katrina. The Department of Housing and Urban Development spends over one-third of its procurement

funds on no-bid contracts. Only 58 percent of the Social Security Administration's contract spending is competitive.

No-bid contracts don't just breed government profligacy, they also open the door to brazen acts of fraud and corruption.

Earlier this year, Barbara Byrd-Bennett, the former CEO of Chicago Public Schools, was convicted of accepting bribes in return for awarding more than \$20 million in no-bid contracts to education consulting firm SUPES. Such misdeeds are hardly surprising when lucrative contracts are awarded at the discretion of individual officials and not through a transparent, merit-based process.

There's already a system to avoid such reckless spending, fraud, bribery and collusion — it's called full and open competition. When it comes to improving programs like our veterans' healthcare, we ought to know that the government awards its contracts on merit.

We also ought to be confident that the tens of billions of dollars spent over the next five to 10 years to improve systems will work. We cannot put our veterans' health in the hands of an untested, unverified system and simply hope to see the benefits one day.

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